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sworn testimony², and closing statements filed by the parties, the Court reserved decision. This is the Court's Final Decision and Order.

I. Procedural Posture

This Court has jurisdiction to decide this matter pursuant to 10 Del. C. §1322.

A. Complaint

The Complaint alleges that Defendants Richard G. Frunzi and Megan E. Frunzi ("Frunzi's") contracted to hire Paoli Services, Inc. ("Paoli") to install a residential sanitary sewer line on their property³. Paoli alleges that per the contract they were not responsible for any unforeseen or undisclosed conditions encountered during the execution of their contract⁴. Paoli alleges that during the course of performing under the contract Paoli encountered a high water table which was both unforeseen and undisclosed⁵. Paoli alleges that they informed Frunzi's about the extra cost associated with this condition and that the Frunzi's agreed to pay the cost associated with these conditions⁶. Paoli alleges that Frunzi's failed to pay for the work performed under the contract⁷. Paoli request this Court awards damages in the amount of \$21,062.05, plus interest, cost and attorney's fees as permitted by the contract for breach thereof⁸.

B. Answer

Richard G. Frunzi ("Richard") admits that he hired Paoli to install a residential sanitary sewer line on their property by a contract dated December 10, 2007. Richard alleges the performance of the work under the contract was to be pursuant to specific directions and

² Dominick Paoli (for the Plaintiff), Luigi Barlotti (for the Plaintiff), Richard Frunzi (for the defense), and John Everhart (for the defense)

³ Complaint at ¶3.

⁴ Complaint at ¶4.

⁵ Complaint at ¶3 (sic).

⁶ Complaint at ¶4 (sic).

⁷ Complaint at ¶5

⁸ Complaint at 2.

drawings given to Paoli by Richard⁹. Richard denies that he did not disclose the high water table. Richard alleges that he informed Paoli of the location of the water table and the depth with which the sanitary sewer line should be installed¹⁰. Richard denies that Paoli failed to complete a vast majority of the work contracted for and further alleges that Paoli left the work site in shambles¹¹. Richard alleges by leaving the work site in shambles Paoli caused a “cave-in” on the adjoining owner’s property. Richard denies that he agreed to pay the extra cost associated with the excavating near the high water table. Richard denies that he signed any change order for the extra cost associated with excavating near the high water table. Richard alleges that Paoli breached the contract by failing to perform the work contracted for. This breach caused the Frunzi’s to incur further expenses.

The Frunzi’s assert two affirmative defenses¹². The first is that Paoli failed to state a claim upon which relief could be granted with respect to Megan E. Frunzi who was not a party to the contract. The second claim is that Paoli is barred because of the defective nature of his work, by Paoli’s failure to timely perform work under the contract, and other repeated breaches of the contract by Paoli.

C. Counter Claim

Richard admits he entered into a contract on or about December 10, 2007 with Paoli to perform work under the contract for the sum of \$10,400. Richard alleges that before entering into the contract he informed Dominick Paoli, “Dominick”, owner of Paoli Services, Inc., about the high water table on the Frunzi’s property and the need for the sanitary sewer line to be

⁹ Answer and Counterclaim at ¶3.

¹⁰ Answer and Counterclaim at ¶4.

¹¹ Answer and Counterclaim at ¶3(sic)

¹² Answer and Counterclaim at 2.

installed with a one-eighth (1/8) inch fall per foot to minimize intrusion into the water table¹³. Richard alleges he provided Dominick with a detailed drawing provided to him by New Castle County which showed the location of the approved sewer line and tie-in to the manhole in the street. Richard alleges that Dominick was aware of the high water table because of his previous work in the area and alleges that Dominick said he would be able to take care of any issues concerning the high water table if they arose¹⁴. Richard alleges that Dominick informed him the only additional charges that would be billed to him were for rental fees for additional pumps if Paoli's pumps were insufficient to remove the water that might be encountered. Richard alleges that Paoli damaged a storm drain under their property and caused a cave-in on the adjoining neighbor's property¹⁵. Richard states that he had to hire a new contractor to finish the job at a cost of \$19,251.56¹⁶ allegedly because of the mess left behind by Paoli after failing to fully perform under the contract. Richard alleges that because of the damages caused by Paoli to his neighbor's property he incurred attorney's fees to defend against an action by the adjoining neighbor. Richard also alleges that he was unable to obtain a certificate of occupancy because the sanitary line was not installed and therefore he incurred damages in the way of rent and storage fees.

Richard includes two counts in his counter claim¹⁷. The first count is that Paoli breached the contract by failing to perform the work contracted for and caused significant damages to Richard by the defective work performed. The second count is that Paoli was negligent in that Paoli failed to exercise reasonable and diligent care in executing the work on the Frunzi's property. Specifically, Richard states that Paoli failed to follow the sequence of the construction

¹³ Counterclaim at ¶4.

¹⁴ Counterclaim at ¶5.

¹⁵ Counterclaim at ¶8.

¹⁶ Counterclaim at ¶9.

¹⁷ Answer and Counterclaim at 5.

as set forth in the contract, ignored the information provided by Richard, failed to investigate and determine the location of the storm drain that was damaged in the excavation, failed to properly shore the sides of the ditch thereby cause the sides to collapse, failed to follow the approved plans, and failed to perform the work according to industry standards. For both the first and second count Richard is seeking damages in the amount \$14,416.13 as Paoli was the direct and proximate cause of the damages.

D. Answer to Counter Claim

Paoli admits that they entered into a contract with the Frunzi's for the installation of a sanitary sewer line. Paoli admits that they were discussions as to the location of the residential sanitary sewer line, but denies there was any discussion as to a high water table¹⁸. Paoli admits the work was to be completed in a timely manner per the contract¹⁹. The Contract does not indicate what a timely manner is or any time as to how long the work will take²⁰. Paoli denies that it was negligent in the supervision of it employees. Paoli admits that it caused damage to a storm drain, and caused a cave-in of the adjoining neighbor's property. Paoli denies that Frunzi's needed to hire a new contractor to complete the construction. Paoli further denies breaching the contract with the Frunzi's and denies performing the work negligently.

Paoli asserts several affirmative defenses²¹. The first is that Frunzi's failed to state a claim upon which relief can be granted. The second through the fifth affirmative defenses are that Frunzi's damages are barred in whole or part because: of their own breach of contract; of their own negligence; of the statute of limitations; of the doctrines of waiver, acquiesces and estoppels.

¹⁸ Answer to Counterclaim at ¶4.

¹⁹ Answer to Counterclaim at ¶6.

²⁰ See joint exhibit #1.

²¹ Answer to Counterclaim at 2.

II. Statement of the Facts

Based upon the documentary evidence and sworn testimony the Court has determined the following are the relevant facts as they pertain to this civil action.

Dominick Paoli (“Dominick”) is the owner of Paoli Services Inc., and Paoli Services has been in been doing excavation site work and structural concrete for the past twelve (12) years. Dominick has 15 years personal experience in this type of business. Luigi Barlotti (“Luigi”) was the foreman on the Frunzi construction site, and oversaw the day to day work on the job site. Luigi has worked for Paoli Services, Inc. for ten (10) years, and has been a foreman for Paoli Services, Inc. for the last nine (9) years.

Richard Frunzi (“Richard”) is self employed, whose primary business is in the area of large scare museum exhibits. On the instant construction job Richard was the acting general contractor and designer on this project. Richard’s past experience related to the construction industry was when he and neighbors as part of a civic association installed nine (9) residential sanitary sewer lines under the supervision of a licensed plumber in the Melody Meadows Development. Mr. Frunzi also has experience in the construction industry when he was an assistant surveyor laying out Vine St. to the Schuylkill Expressway in Philadelphia. In addition, Richard was a Bobcat sales representative. It was as a Bobcat sales representative that Dominick and Richard first met.

Richard was in the process of building his residence. In order for Richard to obtain the required certificate of occupation, “CO,” he needed to have a sanitary sewer line installed. Richard applied for a plumbing permit on October 18, 2006. In preparation to install the sanitary sewer line Richard therefore contacted New Castle County to determine where his residential sanitary sewer line would connect to the county sanitary sewer line. At some point during this

initial process a test hole was drilled to determine the depth of the water table. The test hole was drilled roughly halfway between the street and the house. The water table at this test hole was determined to be seven (7') feet below the surface. It was also determined that the water table at the manhole was nine (9) feet below the surface.

Richard painted the route of the sanitary sewer line on the ground to connect to the manhole. It was then determined that in order to avoid the water table the residential connection would enter near the top of the manhole. Once inside the manhole the residential connection would then run vertically down the manhole to connection to the county sewer line. In order to enter near the top of the manhole, and avoid the water table, Richard calculated that the residential sanitary sewer line would need to be two hundred seventeen (217) feet long with a drop of one-eighth ($1/8$) inch per foot. This results in a total drop of 2.26 feet over the total 217 feet run of the residential sanitary sewer line. With these calculations Richard determined that he would enter the manhole just above the water table at eight feet three and one half inches ($8' 3\frac{1}{2}"$).

After determining the parameters for installation of the Residential sanitary sewer line Richard came to the conclusion that he was unable to handle the roadway traffic control. Primarily because of the roadway traffic control, Richard then decided that he needed to hire a contractor to install his residential sanitary sewer line. Because of Richard's past dealings and conversations with Dominick, while he was Bobcat sales representative, Richard considered hiring Paoli Services, Inc. Richard had Dominick come to his home to discuss the potential work. Dominick then performed a site inspection at Richard's property. Richard was present for this site inspection. After the site inspection Dominick and Richard discussed the location of the sanitary sewer line, the depth of the water table, and the connection to the county sewer line. On

or about December 10, 2007 Richard signed a contract with Paoli Services, Inc. to perform the work.

The contract²² specified an order of operation as to what was to be performed. The first thing that was to be performed was the work in the road and the connection to the County sewer line. After the work in the roadway was done the sanitary sewer line was to be laid towards the house. Paoli Services, Inc. performed the work in reverse, from the residence towards the manhole²³. Richard noticed the change in the construction sequence on the first day of construction when he exited his residence at ten (10) O'clock in the morning and saw Paoli Services, Inc. digging near the house. Richard spoke to a Paoli Services, Inc. employee who identified himself as a foreman in training about this change. Richard did not speak to Luigi, the foreman, who was controlling the backhoe. Richard let the work proceed. He did not stop Paoli Services, Inc. employees from working.

In addition to changing the sequence of construction Paoli Services, Inc. determined it could not enter near the top of the manhole because it would interfere with the ladder inside the manhole. It was then determined that the connection to the county sewer line would be made near the bottom of the manhole. Besides avoiding the ladder the residential sanitary sewer line could be horizontally connected to the county sewer line, removing the need for the vertical drop. A change was also made as to the route of the sanitary sewer line from the residence to the manhole. The new route would remove a forty five (45) degree bend and take the pipe on a direct

²² See joint exhibit #1 "Once the roadwork is completed" (this indicates to the court that this work should be done first).

²³ Based on the testimony of Luigi Barlotti and John Everhart, there is no industry standard or custom in this type of construction. A residential sanitary sewer line can either be starting from the counter sanitary sewer towards the residence or vice versa. The Court agrees with John Everhart view on this matter in that it is a better business practice to start from the street where most of the conflicts with other utilities generally will be encountered.

path to the manhole. A message was left on Richard's answering machine as to the new route and depth of the pipe and new lines were painted on the ground as to the new route.

In order for Richard's sanitary sewer to connect near the bottom of the man hole the fall per foot would need to be increased from one-eighth ($1/8$) inch to one-fourth ($1/4$) inch per foot. This would result in a total fall of 4.52 feet over the entire two hundred seventeen (217) feet of pipe. This would put the sanitary sewer line clearly within the high water table. Richard did not stop the construction at this point nor did he contact Dominick about these changes. Richard did tell the Paoli Services, Inc. employees on site that they were going to hit water sooner than expected. The work proceeded normally until an obstacle was encountered. For this construction there were two main obstacles that were encountered.

The first major obstacle that was encountered while digging the trench was a thirty two (32) inch storm drain owned by DelDOT. The storm drain was punctured by a backhoe. This damage resulted in having to remove a twenty (20) foot section of the storm drain pipe. This obstacle was completely avoidable if 811²⁴ was called to determine if there were underground utilities in the construction zone. Neither Richard nor Paoli Services, Inc. called 811 to determine if there were any underground utilities in the path of construction.

The second major obstacle that was encountered was in the last twenty one (21) feet of the installation of the sanitary sewer line where Paoli Services, Inc. encountered the high water table. The last twenty one (21) feet included the work in the roadway.

According to work order No. 2575²⁵, dated January 9, 2008, Paoli Services Inc. pumped out the ground water from the trench and re-excavated the trench due to the trench caving in.

²⁴ 811 is the toll free number of Utilities Protection Services of Delmarva, commonly referred to as "Miss Utilities" or "Miss the Utilities," as required by 26 Del. C. §807.

²⁵ Joint exhibit #18.

Then on January 10, 15, 16, 22, 23, 24, and 25, 2008²⁶ Paoli Services Inc. again pumped out the ground water and re-excavated the trench due to recurring cave-ins. Paoli Services Inc. did not use a trench-box to shore the sides of the trench until or after January 24, 2008²⁷. Paoli Services Inc. knew the depth of the water table and knew changing the slope of the pipe from one-eighth (1/8) inch to one-fourth (1/4) inch per foot would result in Paoli Services Inc. having to dig into the water table.

One consequence of the repeated cave-ins of the trench was that Richard's neighbor's driveway partial collapsed due to the erosion of the soil on which the driveway was laid on. Another consequence of the cave-ins was that the roadway was partially blocked to traffic and there was an increase of dirt on the roadway.

On January 29, 2008 Dominick faxed Mike Graham of New Castle County, Department of Special Services, Engineering & Environmental Services Division, a requested construction sequence in "dealing with getting the lateral installed into the existing manhole."²⁸ Dominick then faxed Mike Graham twice more with revised construction sequences on February 8 and 9, 2008.

Richard fired Paoli Services, Inc. and contracted with Brandywine Construction Company, Inc., "BCCI," to finish completing the last twenty one (21) feet of the residential sewer line and to repair DelDOT's storm drain pipe. After BCCI's involvement there were no further incidents. BCCI's performed the following actions to finish repairs and construction: replaced a twenty (20) foot section of the thirty two (32) inch corrugated storm pipe, poured concrete collars to seal the connections of the replaced storm pipe, ran twenty two (22) feet of six

²⁶ Joint Exhibits #16 - 18.

²⁷ See joint exhibit #16 (the last item in the equipment column).

²⁸ See joint Exhibit #2.

(6) inch sanitary sewer pipe, replaced the sandsleeve connection to the manhole, and repaired the roadway. The total of BCCI's repairs was invoiced as \$19,251.56.

To date Mr. Frunzi has paid Paoli Services, Inc., zero (\$0) dollars for its services and has paid BCCI twelve thousand (\$12,000) dollars for its services to complete the instant work.

III. Discussion

This discussion will be broken down into the following sections: Release of Claims, Storm Drain Liability, Breach of Contract, Attorney Fees, and Damages.

A. Release of Claims

At the start of the trial both parties stipulated to releasing Megan E. Frunzi from any and all claims related to this civil action. After the testimony of Richard G. Frunzi ("Richard"), Richard released the claims of rent and storage charges against Paoli Services, Inc. ("Paoli")²⁹.

B. Storm Drain Liability

The court finds both Richard and Paoli are equally liable for the damage to DelDOT's storm drain. The legislature has created a statute, Underground Utility Damage Prevention and Safety Act, with the stated purpose of...

Providing for the protection of the public health and safety, certain procedures are necessary to assure that persons performing excavation [] operations know, prior to commencing such operations, of the presence or location of underground utilities in the excavation [] area. Certain precautions must be taken to avoid injuries and damage to [] property, to avoid disruption and discontinuation of utility services to members of the public and to promote safe operations during excavation []³⁰.

Furthermore, the Legislature determined that this Act should be liberally construed³¹. Under this act Richard and Paoli are defined as "Person's."³² Because both Richard and Paoli intended to

²⁹ These two claims are listed in Counterclaim at ¶10(i) and ¶10(ii).

³⁰ 26 Del.C. §801(a).

³¹ 26 Del.C. §801(b).

³² 26 Del.C. §802(10).

perform excavation work, with Paoli actually doing the work, they are both “Excavator’s” under the act³³. Since, Richard and Paoli are “Excavator’s” under the Act both of them had a duty to “ascertain the location and type of utility lines.”³⁴

The legislature intended both Richard and Paoli to have this duty when it wrote “it shall be the duty of *each* excavator...”³⁵ (emphasis added). If the Legislature had intended for one Excavator to be able to delegate this duty the statute would have only referred to *one* excavator, or *the primary* excavator, or *the delegated* excavator. Because the statute does not say this the Court has determined that this duty of excavators may not be delegated or contracted to another party. For this reason the Court finds that both Richard and Paoli are equally liable for the damage to the storm drain.

The Court also finds an alternative basis for why both Richard and Paoli are equally liable for the damage to the storm drain. Richard had a contractual duty to verify the existence and location of any underground utilities or obstacles. Richard breached the contract in not determining the location of any underground utilities.

Paoli also breached the contract. Based upon the testimony of John Everhart, the Court finds that it is a customary business practice and an industry standard for an excavating company to determine or verify what lies in the proposed zone of excavation even when they have contracted this out. As an excavating company for twelve (12) years Paoli should have been aware of this practice and standard. At a minimum Paoli should have verified that there was nothing in the ground around their zone of construction. Paoli breached his contractual

³³ 26 Del.C. §802(8).

³⁴ 26 Del.C. §806(a)(3).

³⁵ 26 Del.C. §806(a).

obligations by not “display[ing] that degree of skill or knowledge normally possessed by members of their profession or trade in good standing under similar communities.”³⁶

By a preponderance of the evidence³⁷ the court finds that both Richard and Paoli are equally liable for the damage to the storm drain pipe.

C. Breach of Contract

To state a claim for a breach of contract one must establish the following: (1) a contract existed; (2) a Defendant breached the contractual obligations; and (3) the breach resulted in damages to the Plaintiff.³⁸

“If a contract is unambiguous, the Court cannot consider extrinsic evidence to interpret the intent of the parties, to vary the terms of the contract or to create an ambiguity.³⁹ If there is uncertainty in the meaning and application of the contract [] this court can consider the evidence offered in order to arrive at a proper interpretation of contractual terms.”⁴⁰,

The breach of contract claims will be discussed by the Court in the following sections;
(1) The first one hundred ninety six (196) feet, (2) the last twenty (21) feet.

1) The first one hundred ninety six (196) feet

For the first one hundred ninety six feet there is no dispute as to the fact that there was a valid contract. The claim and cross claim are that Richard breached the contract because of non-payment and Paoli breached the contract from not following the sequence as laid out in the contract.

³⁶ *Eastern Electric & Heating v. Pike Creek Professional Center*, 1987 WL 9610, *4 (Del. Super. Ct. 1987).

³⁷ see *Neilson Business Equipment Center, Inc. v. Monteleone*, 524 A.2d 1172 (Del. Super. Ct. 1987); see *Warwick v. Addicks*, 157 A.2d 205,206 (Del. Super. Ct. 1931).

³⁸ *VLW Technology, LLC v. Hewlett-Packard Co. ST Microelectronics, Inc.*, 840 A.2d 606, 612 (Del. 2003).

³⁹ see *Eagle Indus., Inc. v. DeVilbiss Health Care, Inc.*, 702 A.2d 1228, 1232 (Del. 1997).

⁴⁰ Id.

Paoli did not breach the contract when they started the excavation work near the residence instead of near the manhole. This court has stated in *Nelson v. W. Hull & Family Improvements* that “[a]” “good faith attempt to perform a contract, even if the attempted performance does not precisely meet the contractual requirement, is considered complete if the substantial purpose of the contract is accomplished.” As the Court has found earlier, although it is not ideal to start excavating at the residence it is not contrary to any professional standard which the Court knows about. The Court also would note that Richard did not try to mitigate this breach by stopping the work or calling Paoli once he became aware of it on the first day of construction.⁴¹ Richard did not try to mitigate this breach of contract. Therefore, the Court finds that Paoli did not breach the contract by performing the excavation out of sequence.

The Court finds that Richard breached the contract by not paying Paoli for the work that was completed on this section of the contract. Even if Paoli had breached the contract they would still be entitled to recover the value of the benefit that was conferred upon Richard.⁴² By a preponderance of the evidence presented the court finds that Paoli correctly installed the first one hundred and ninety six (196) feet of the residential sewer line, and Richard received this benefit.

The Court finds by a preponderance of the evidence that Richard is liable to Paoli for the cost of the first one hundred ninety six (196) feet of the residential sanitary sewer line.

2) The last twenty one (21) feet

For the last twenty one (21) feet the Court must determine if Paoli “displayed that degree of skill or knowledge normally possessed by members of their profession or trade in good standing under similar communities.”⁴³ The Court finds that Paoli did not display either a degree

⁴¹ *Marcano v. Dendy*, 2007 WL 1493792, *6 (Del. Com. Pl. 2007) (citing *Lowe v. Bennett*, 1994 WL 750378, *4 (Del. Super. Ct. 1994)).

⁴² *Id.* At *6 (citing *Heitz v. Sayers*, 32 Del. 207 (Del. Super. Ct. 1923)).

⁴³ *Eastern Electric & Heating v. Pike Creek Professional Center*, 1987 WL 9610, *4 (Del. Super. Ct. 1987).

of skill or knowledge. Paoli knew of the high water table, knew that water was going to have to be pumped, knew the high water table created the possibility for cave-ins, and did not take either preventative or timely corrective action. Paoli did not promptly shore up the trench with a trench box, did not take the preventative action of pumping the ground water, and did not know how to adequately address the situation once it occurred. The Court finds that Paoli is liable for the last twenty one (21) feet of the residential sewer line.

Richard, in addition to the breach of contract, has argued in the alternative that Paoli was negligent in the excavation. For the reasons previously discussed the Court finds that Paoli was negligent in the excavation, but only as it relates to the last twenty one (21) feet.

D. Attorney's Fees

After reviewing closing arguments submitted to the Court in this case the Court has determined that no attorney's fees shall be awarded to either party.

Richard on page nine (9) of his closing argument points to two cases to argue for attorney's fees: *Kramer v. American Pacific Corp.*, 1998 WL 442766 (Del. Super. Ct. 1998) and *Isti Delaware, Inc. v. Townsend*, 1993 WL 189467 (Del. Super. Ct. 1993). Richard is correct in that Kramer states "attorney's fees have been included in the category of special or consequential damages." *Kramer* at *2 (citing *Isti Delaware* at *6). In *Isti Delaware* the Superior Court stated "the special and/or consequential damages are those expenses incurred in connection with the transaction and enforcement of the contract." At *5. The Superior Court goes on to state, *inter alia*, that in *Isti Delaware*, the parties must have "contracted for liquidated damages and the consequential damages of attorney's fees." *Id.* The contract signed by Richard and Paoli does not allow for Richard to recover for attorney's fees. Even if the court were to find that Richard could

recover for attorney fees the Court would find that but for his breach Paoli would not have had to file suit, and Richard would not have incurred attorney fees.

Richard is also seeking attorney fees for his representation by counsel in the lawsuit by his neighbor⁴⁴ against both Richard and Paoli. The court does not believe it has the power to award attorney's fees for third party case in the absence of some authority. The two cases cited by Richard are not analogous to this case and the Court declines to liberally construe the holdings beyond their import in these two cases.

The contract signed by Richard and Paoli does allow Paoli to recover attorney fees for an action resulting from Richard's breach of the contract. Here to, the Court would not be able to award attorney fees to Paoli. But for Paoli's breach of the contract Richard would not have filed suit and Paoli would not have incurred attorney fees.

Based upon the preponderance of the evidence presented to this Court both parties shall carry their own cost and attorney fees.

E. Damages

Damages for breach of a contract will be in an amount sufficient to return the moving party damaged to the position that the party would have been in had the breach not occurred.⁴⁵ The moving party, however, has the responsibility of proving damages as an essential element of their claim by a preponderance of the evidence.⁴⁶

As to the storm drain, the court is unable to determine from the evidence submitted what part of the work done by BCCI was for the last twenty one (21) feet of the residential sanitary sewer line and what was for the storm drain. Therefore, the court cannot by a preponderance of

⁴⁴ C.A. No. U408-09-103.

⁴⁵ *Meyer & Meyer, Inc. v. Brooks*, 2009 WL 2778426, *3 (Del Com. Pl. 2009) (citing *Delaware Limousine Service, Inc. v. Royal Limousine Svc.*, 1991 LEXIS 130, *8 (Del. Super. Ct. 1992)).

⁴⁶ *Id.* at *3.

the evidence award damages for this item. If there is evidence in the instant record, counsel shall point to the same but the Court finds non at this junction.

As to the first one hundred ninety six (196) feet of the residential sanitary sewer line, the Court will award an amount consisted with the work performed. The Court finds that 90.74%⁴⁷ of the work was done. Therefore, the court by a preponderance of the evidence awards 90.74% of the original contract price, \$10,400, or \$9,436.96 as damages to Paoli Services, Inc.

As to the last twenty one (21) feet of the residential sanitary sewer line, the court finds that Richard Frunzi did not suffer any damages. He has not paid any money to Paoli Services, Inc. and therefore was not injured by their breach of the contract in this section. Therefore, the court cannot by a preponderance of the evidence award damages for this item.

As to attorney's fees the Court shall not awarded any attorney's fees. The Court has determined in this trial record that both parties shall carry their own cost and attorney's fees.

IV. Conclusion

For the reasons stated above, the Court awards to the Plaintiff damages in the amount of \$9,436.96 plus pre-judgment and post-judgment interest at the legal rate until satisfied. 6 *Del.C.* §2301 *et seq.*

IT IS SO ORDERED this 27th day of June, 2011

John K. Welch
Judge

cc: Ms. Tamu White, Chief Case Manager
Civil Division, CCP

⁴⁷ This value was calculated using the following equation: (linear feet completed / linear feet contracted for) x 100%, or (196 ft / 217 ft) x 100%